IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.914 OF 2003

Vaijinath Yadav Kade ...Appellant

Vs.

Chandrabhan Abhiman Shinde & Ors. ...Respondents

Mr.G.S.Godbole with Mr.Sahastrabudhe for the Appellant
Mr.Dilip Bodake for the Respondent No.1

CORAM: A.S.OKA, J.
DATED: APRIL 13,2005.

P.C.:

1. Heard Advocates for the parties. The Appeal is by the original Defendant No.2 against whom the decree for possession has been passed by the Trial Court and the same is confirmed by the Appellate Court.

2. The learned Advocate for the Appellant pointed that the courts below have relied upon the map prepared by the Cadastral Surveyor who was appointed as a Court Commissioner and the said Court Commissioner did not measure the adjoining properties. He pointed out that an Application at Exh.42 was made by the Appellant before the first Appellate Court praying for direction for 'Nimtana' measurement in view of the fact that the adjoining plots were not measured. He pointed out that the said application has been rejected. He placed reliance on the decision of this Court reported in 1994 Mh.L.J. page No.664 (Tajmulhussain Vs.Satish).

3. I have considered the submissions made by the learned

Counsel for the Appellant. Perusal of the averments made in the plaint and in the written statement of the Appellant show that this is not a case of boundary dispute between the parties. The case of the original Plaintiff is that his predecessor in title while selling the property to the original Plaintiff retained possession of a portion of the property and agreed to vacate the same at later stage. The case of the Plaintiff is that instead of vacating the portion of the property, the predecessor of the Plaintiff purported to sell the said portion to the Appellant and this is the reason why a suit for possession was came to be filed. As there is no dispute as regards determination of boundary of particular survey number or City Survey number, the decision relied upon by the Appellant will have no application to the facts of the case.

4. The original Plaintiff has established the title to the property in dispute and there are concurrent findings in that behalf. Hence, no case is made out for interference in the Second Appeal under Section 100 of Code of Civil Procedure, 1908. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.